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16

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA
19

20 NICOLAS WOOD, individually and on behalf
of all others similarly situated,

21 Plaintiff,

22 v.
23

24 BBG COMMUNICATIONS, INC., BBG
GLOBAL AG, and BBG HOLDINGS, LTD.,

25 Defendant.
26
27
28

Case No. 11CV0227 AJB (NLS)

CLASS ACTION

**JOINT CASE MANAGEMENT
STATEMENT**

CMC

Date: 1/13/12

Time: 9:45 a.m.

Judge: Nita L. Stormes

Courtroom: G

Pursuant to the Court's December 12, 2011 Minute Order, Plaintiff and Defendants BBG Communications, Inc. ("**BBG Communications**") and BBG Global AG ("**BBG Global**" and collectively referred to as "**Defendants**") hereby submit their Joint Case Management Statement.

1. PROPOSED DISCOVERY PLANS

a. Plaintiffs' Proposed Discovery Plan

The parties differ on how they propose discovery be conducted. Plaintiff believes no restriction should apply to discovery and Defendants want to trifurcate discovery. If discovery is truncated, whether bifurcated or trifurcated, discovery will be performed in sequence instead of parallel or simultaneously. This will necessarily consume, assuming Defendants' Motion for Summary Judgment ("MSJ") is denied, more time before Plaintiff can complete Motion for Class Certification ("MCC") and Trial discovery; resulting in MCC and Trial dates that are extended from those Plaintiff originally proposed and the Court indicated in its Order Following Early Neutral Evaluation Conference.

Defendant proposes initial disclosures be deferred until after its Motion for Summary Judgment ("MSJ") is heard. Plaintiff opposes this as initial disclosures require parties to disclose facts, witnesses and documents that support their "claims or defenses." FRCP 26(a)(1)(A)(Emphasis Added.) If Defendants are not required to make their initial disclosure now, Plaintiff will be deprived of his right to know the facts, documents and witnesses that Defendants claim support their defense that this Court lacks jurisdiction or that BBG Global AG is not the alter ego of BBG Communications, Inc., which issues are the likely to be crux of Defendants' MSJ. If the Court were to delay the parties' initial disclosures, as Defendants propose, Plaintiff would be prejudiced. Plaintiff proposes that initial disclosures be served immediately.

Plaintiff has already served his first Rule 34 request for production to BBG Communications and BBG Global AG. Also, Plaintiff has already served subpoenas on third parties.

If the court truncates discovery, as Defendants propose, into MSJ jurisdiction and alter-ego discovery, followed by MCC discovery, followed by merits discovery, resolution of the case will suffer from certain delay. Plaintiff does not oppose restricting pre-MSJ discovery to those issues

1 raised by Defendants' MSJ, including, but not limited to, alter-ego, jurisdiction, and significant
 2 merits issues, such as application of the safe harbor doctrine to Plaintiff's Bus. & Prof. Code
 3 17200 claim, extraterritoriality (See *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869, 2876-
 4 77 (2010); *Norex Petroleum Ltd. v. Access Indus., Inc.*, 631 F.3d 29, 32 (2d Cir. 2010)("a statute's
 5 extraterritorial reach is properly analyzed as a merits question"), and whether rates and fees were
 6 adequately disclosed or would have deceived a reasonable consumer acting reasonably under the
 7 circumstances.

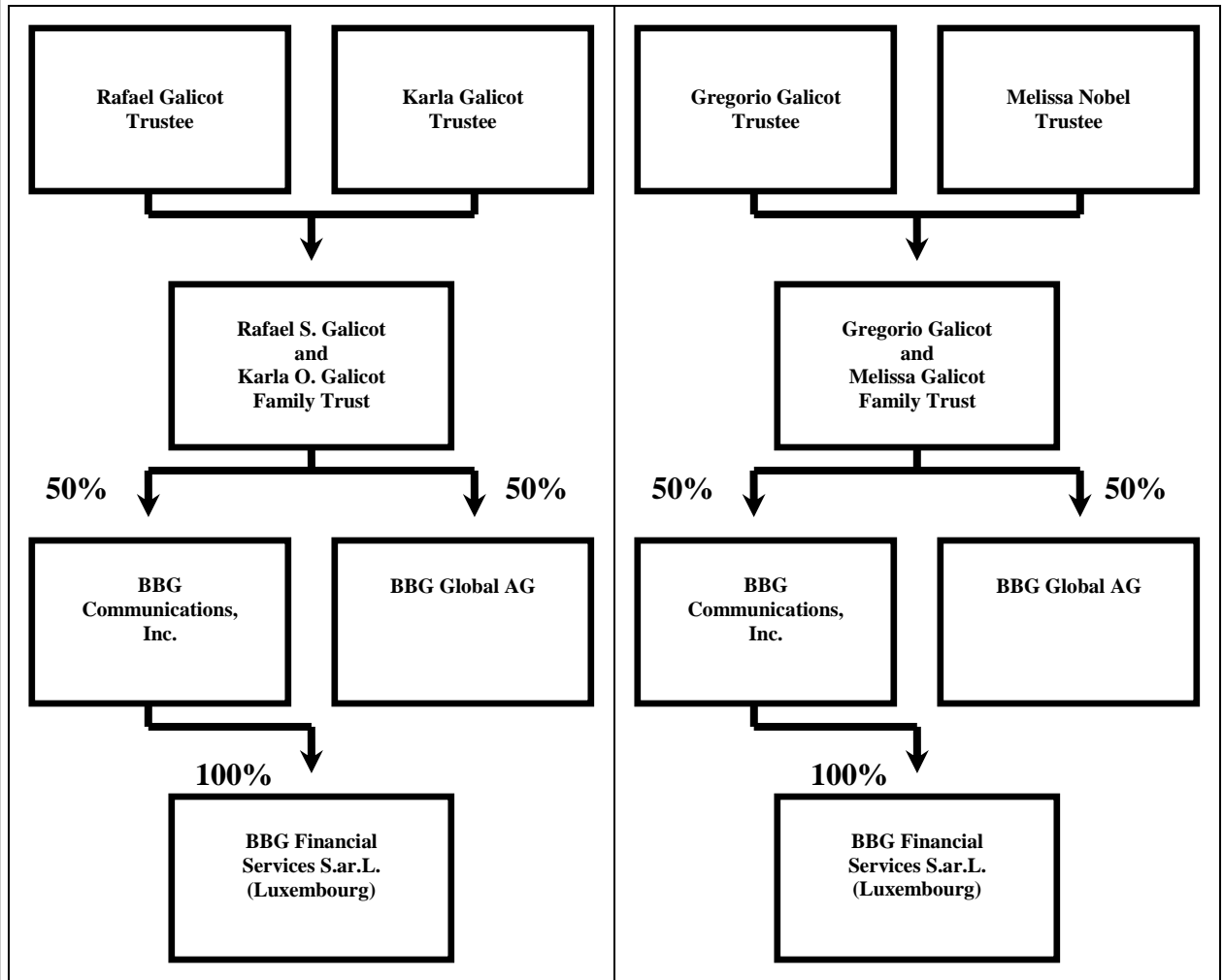
8 i. **Initial Discovery (Pre-MSJ)**

9 The Court and counsel discussed Defendants' intention to file MSJ motions based on
 10 jurisdiction, extraterritoriality, alter ego and defendants' adequacy of disclosure of rates and fees.
 11 Counsel had additional discussions on the scope of Defendants' MSJ before completing this
 12 report. Counsel for BBG indicated that any MSJ would be similar in scope to the one filed in the
 13 related *Sajfr* case, which involved jurisdictional and merits issues. Plaintiff expects that he will
 14 not conclude his alter-ego and jurisdiction discovery until June 30, 2011. Plaintiff has considered
 15 the alter-ego and merits discovery he would need to conduct and it is extensive, as the alter ego
 16 analysis is inherently broad in scope. See *Associated Vendors, Inc. v. Oakland Meat Co.*, 210
 17 Cal.App.2d 825, 838-841 (1st Dist.1963) (discussing the various factors in determining whether to
 18 disregard the corporate entity including, *inter alia*: the identical equitable ownership in the two
 19 entities; the identification of the equitable owners thereof with the domination and control of the
 20 two entities; identification of the directors and officers of the two entities in the responsible
 21 supervision and management; sole ownership of all of the stock in a corporation by one individual
 22 or the members of a family [citations]; the use of the same office or business location; the
 23 employment of the same employees and/or attorney [citations]; the use of a corporation as a mere
 24 shell, instrumentality or conduit for a single venture or the business of an individual or another
 25 corporation [citations]; the concealment and misrepresentation of the identity of the responsible
 26 ownership, management and financial interest, or concealment of personal business activities
 27 [citations]; the disregard of legal formalities and the failure to maintain arm's length relationships
 28

1 among related entities [citations]; the use of the corporate entity to procure labor, services or
2 merchandise for another person or entity [citations]; the diversion of assets from a corporation by
3 or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of
4 assets and liabilities between entities so as to concentrate the assets in one and the liabilities in
5 another [citations]; the contracting with another with intent to avoid performance by use of a
6 corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of
7 illegal transactions [citations]; and the formation and use of a corporation to transfer to it the
8 existing liability of another person or entity [citations]). (internal citations omitted.)
9

10 Based on these and other factors enunciated by the courts, the scope and volume of
11 discovery includes, but is not limited to: the production of records regarding the formation,
12 operation, and management of the BBG entities; the formation of the Galicots' Trusts (which
13 Trusts own the BBG entities); the capitalization of BBG Global; the income and expenses, assets
14 and access to capital of the BBG entities; the financial institution records of the Galicots, the BBG
15 entities, the Galicots' Trusts, and the principal operators of the BBG entities, brothers Rafael and
16 Gregorio Galicot (who are also co-trustees of their respective Galicot Trusts); the tasks conducted
17 by each entity with respect to a given telephone transaction; decision making and control at the
18 BBG entities by the Galicots; the location where business is actually conducted; and whether the
19 formation of BBG Global stemmed in any way from an attempt to avoid civil or criminal liability,
20 including tax liability following the Galicots' IRS audit or illegal transactions such as the one at
21 issue in this case

22 The flow chart below is a limited understanding of the individuals, trusts and entities
23 involved in the facts of this case. The Galicots are co-trustees with their wives of two family
24 trusts that own all or majority shares of Defendants, who in turn own all or majority shares of
25 other entities. (It has also come to Plaintiff's attention that defendant BBG Communications has
26 recently transferred ownership of subsidiary Faircall Corporation, a long-distance reseller, to two
27 irrevocable trusts for the benefit of the Galicots' children.):
28



Also, with regard to the jurisdictional issues, the scope of discovery will include, but is not limited to: whether BBG Global AG conducts business in California; the minutes and agendas of the BBG entities management and board meetings; the travel records of Rafael and Gregorio Galicot, Irene Fedier, and Pilar Urbino, and other BBG employees and board members; the phone records of Gregorio and Rafael Galicot and the BBG entities; loans and credit agreements for Rafael and Gregorio Galicot, the Galicots' Trusts and the BBG entities; the agreements between the BBG entities, the Galicots' Trusts and Rafael and Gregorio Galicot, on the one hand, and companies that perform phone services for them and facility owners or operators (e.g., owners and operators of airports, train stations, bus stations and other transportation facility operators) on the other hand; a list of all master and sub agents that allegedly solicit and obtain agreements from facility operators for any of the BBG entities; the location of the creation of BBG's scheme to

1 defraud consumers through non-disclosure of material information; the location of the creation and
 2 dissemination of payphone artwork, the location of BBG Global's bank accounts and other assets
 3 in California; and communications in California between the Galicots and master agents living in
 4 California, such as Salvador Lombrosso, regarding properties allegedly serviced BBG Global,
 5 such a Leipzig airport in Germany

6 In addition to this written discovery, Plaintiffs will subpoena Rafael and Gregorio
 7 Galicot's, the BBG entities' and the Galicot Trusts' records from at least Wells Fargo Bank and
 8 likely other financial institutions once Plaintiff knows the identity of the financial institutions in or
 9 through which the Galicots' Trusts, the BBG entities and Rafael and Gregorio Galicot conduct
 10 financial transactions. Plaintiff will subpoena BBG, the Galicots' Trusts and Rafael and Gregorio
 11 Galicot accountant's records regarding BBG entities, the Trusts and the Galicots.

12 Plaintiff also intends to take the depositions of: 1) Rafael Galicot; 2) Gregorio Galicot 3)
 13 30(b)(6) deposition on various relevant categories of BBG Communications, Inc.; 4) 30(b)(6)
 14 Depositions of on various relevant categories of BBG Global AG; 4) Pilar Urbino – the original
 15 manager of BBG Global until 2009 when she resigned; 5) Salvador Lombroso – a master agent of
 16 BBG Global residing in California who conducted extensive negotiations with Gregorio Galicot in
 17 California about properties in Europe; 6) Ricardo Singer – owner of Sincrop Enterprises which
 18 lists BBG Comm's San Diego address as its own on public filings and on whose behalf BBG's
 19 general counsel Cristina Rodriguez-Rios signed fictitious business name statements with the San
 20 Diego County Recorder's office; 7) Luis Maizel – co-owner with the Galicots of BBG Comm's
 21 physical business address; a possible investor in the BBG entities and officer of BBG Comm; 8)
 22 Jack Maizel – California resident and son of Luis Maizel and past and/or current part owner of
 23 BBG Global AG; 9) certain current and former middle and upper management personnel of the
 24 BBG entities; 10) the trustees of the Trusts that own the BBG entities; 11) Wells Fargo personnel
 25 familiar with the BBG Entities, the Trusts and the Galicots' banking business with Wells Fargo;
 26 12) personnel familiar with BBG's customization of operator services at Network Operator
 27 Services, Inc./Centris Information Services; 13) Brian Rhys – high level manager who negotiated
 28 agreements on behalf of the BBG entities and may have been involved in the customization of

1 operator services; 14) David Adler – a California resident who allegedly contracts with payphone
2 owners in territories serviced by BBG Global; 15) Denise Galicot – controller of BBG Comm; 16)
3 Cristina Rodriguez-Rios general counsel of the BBG entities who claims to have negotiated
4 agreements from California on a worldwide basis; and 17) the BBG entities’ auditors and
5 accountants. Therefore, Plaintiff proposes that the Court permit up to 25 depositions. The
6 foregoing is the scope of discovery Plaintiff presently expects to conduct to prepare himself to
7 oppose Defendants’ MSJ and demonstrate that this Court has jurisdiction over Defendants, that
8 Defendants are alter egos of each other, and that Defendants’ non-disclosure of rates and fees is
9 likely to deceive a reasonable consumer, is unfair, unlawful, and unconscionable. The Galicots’
10 decisions to create a complicated scheme to defraud consumers necessitate detailed discovery.

11 As to the merits issues raised by the MSJ, Plaintiff will have to examine BBG’s payphone
12 artwork, call center scripts, employee handbooks, and other instructions or directives regarding
13 how rates and/or fees are to be disclosed, if at all. Plaintiff will also need to examine and
14 subpoena third parties on the volume of complaints and chargebacks registered against BBG.
15 Plaintiff will have to examine the location of call rating, artwork design, artwork dissemination,
16 and operations management.

17 By conducting the discovery described, above, Plaintiff anticipates he will learn of
18 documents and witnesses presently unknown which will necessitate additional discovery.

19 Prior to filing this propose scheduling order, Plaintiff described to BBG’s counsel much of
20 the discovery described above and discussed the same. From that discussion Plaintiff’s counsel
21 understand that they will get some of the information without dispute, but there will be disputes
22 regarding: a) the discovery of the Galicots’ Trusts and Rafael and Gregorio Galicot’s financial
23 information and bank records, and b) the contracts with facility operators and sales agents.. If
24 these areas of disputed discovery are not voluntarily resolved, the Court will need to hear
25 discovery motion(s). The foregoing, in the aggregate led Plaintiff to conclude he cannot complete
26 the described MSJ discovery before the end of June, 2012.

27 A factor to consider if the Court truncates discovery in this matter is that depositions will
28 be limited during the initial discovery and therefore will necessitate deposing certain witnesses

1 more than once. Plaintiff raised this issue with Defense counsel and he proposed, and Plaintiff
2 agrees that each witness could be deposed more than once but the aggregate time for the
3 depositions of a percipient witness not exceed the 7 hours provided in the FRCP, with due
4 consideration given to the location of the witnesses, i.e. Switzerland and/or the Czech Republic.
5 Plaintiff requests that the Court consider this issue and address it in its Scheduling Order.

6 In the course of meet and confer dialogue regarding this Joint Proposed Scheduling Order,
7 Mr. Puglisi offered that the Defendants could file their MSJ within a relatively short time.
8 Plaintiff's counsel understood this time to be by the end of January or middle of February.
9 Plaintiff accepts this offer and asks that the Court issue a scheduling order that includes the
10 following MSJ briefing schedule.

11 Plaintiff will need to obtain and review: the financial institution records of the Galicots, the
12 Galicots' Trusts and the BBG entities; the minutes and agendas of the BBG entities management
13 and board meetings; the travel records of Rafael and Gregorio Galicot, Irene Fedier, and Pilar
14 Urbino, and other BBG employees and board members; the phone records of Gregorio and Rafael
15 Galicot and the BBG entities; loans and credit agreements for Rafael and Gregorio Galicot, the
16 Galicots' Trusts and the BBG entities; the agreements between the BBG entities, the Galicots'
17 Trusts and Rafael and Gregorio Galicot, on the one hand, and companies that perform phone
18 services for them and facility owners or operators (e.g., owners and operators of airports, train
19 stations, bus stations and other transportation facility operators) on the other hand; and a list of all
20 master and sub agents that allegedly solicit and obtain agreements from facility operators for any
21 of the BBG entities.

22 In addition to this written discovery, Plaintiffs will subpoena Rafael and Gregorio
23 Galicot's, the BBG entities' and the Galicot Trusts' records from at least Wells Fargo Bank and
24 likely other financial institutions once Plaintiff knows the identity of the financial institutions in or
25 through which the Galicots' Trusts, the BBG entities and Rafael and Gregorio Galicot conduct
26 financial transactions. Plaintiff will subpoena BBG, the Galicots' Trusts and Rafael and Gregorio
27 Galicot accountant's records regarding BBG entities, the Trusts and the Galicots.

1 Plaintiff also intends to take the depositions of: 1) Rafael Galicot; 2) Gregorio Galicot 3)
 2 30(b)(6) deposition on various relevant categories of BBG Communications, Inc.; 4) 30(b)(6)
 3 Depositions of on various relevant categories of BBG Global AG; 4) Pilar Urbino; 5) Salvador
 4 Lombroso; 6) Ricardo Singer; 7) Luis Maizel; 8) Jack Maizel; 9) certain current and former
 5 middle and upper management personnel of the BBG entities; 10) the trustees of the Trusts that
 6 own the BBG entities; 11) Wells Fargo personnel familiar with the BBG Entities, the Trusts and
 7 the Galicots' banking business with Wells Fargo; 12) personnel familiar with BBG's
 8 customization of operator services at Network Operator Services, Inc./Centris Information
 9 Services; 13) Brian Rhys; 14) David Adler; 15) Denise Galicot; 16) Cristina Rodriguez-Rios; and
 10 17) the BBG entities' auditors and accountants Therefore, Plaintiff proposes that the Court permit
 11 up to 25 depositions.

12 The foregoing is the scope of discovery Plaintiff presently expects to conduct to prepare
 13 himself to oppose Defendants' MSJ and demonstrate that this Court has jurisdiction over
 14 Defendants, that Defendants are alter egos of each other, and that Defendants' non-disclosure of
 15 rates and fees is likely to deceive a reasonable consumer, is unfair, unlawful, and unconscionable.

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 17 artwork, call center scripts, employee handbooks, and other instructions or directives regarding
 18 how rates and/or fees are to be disclosed, if at all. Plaintiff will also need to examine and
 19 subpoena third parties on the volume of complaints and chargebacks registered against BBG.
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 21 and operations management.

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 23 documents and witnesses presently unknown which will necessitate additional discovery.

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 25 the discovery described above and discussed the same. From that discussion Plaintiff's counsel
 26 understand that they will get some of the information without dispute, but there will be disputes
 27 regarding: a) the discovery of the Galicots' Trusts and Rafael and Gregorio Galicot's financial
 28 information and bank records, and b) the contracts with facility operators and sales agents.. If

1 these areas of disputed discovery are not voluntarily resolved, the Court will need to hear
2 discovery motion(s). The foregoing, in the aggregate led Plaintiff to conclude he cannot complete
3 the described MSJ discovery before the end of June, 2012.

4 A factor to consider if the Court truncates discovery in this matter is that depositions will
5 be limited during the initial discovery and therefore will necessitate deposing certain witnesses
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7 agrees that each witness could be deposed more than once but the aggregate time for the
8 depositions of a percipient witness not exceed the 7 hours provided in the FRCP, with due
9 consideration given to the location of the witnesses, i.e. Switzerland and/or the Czech Republic.
10 Plaintiff requests that the Court consider this issue and address it in its Scheduling Order.

11 In the course of meet and confer dialogue regarding this Joint Proposed Scheduling Order,
12 Mr. Puglisi offered that the Defendants could file their MSJ within a relatively short time.
13 Plaintiff's counsel understood this time to be by the end of January or middle of February.
14 Plaintiff accepts this offer and asks that the Court issue a scheduling order that includes the
15 following MSJ briefing schedule.

February 17, 2012	Date by which Defendant shall file and serve its MSJ
June 30, 2012	MSJ: Alter-ego and Jurisdiction Discovery completed by:
August 14, 2012	Date by which Plaintiff shall file and serve its Opposition to Defendant's MSJ
August 28, 2012	Date by which Defendant shall file and serve its Reply in Support of MSJ
September 11, 2012	Hearing of Defendant's MSJ

22 **ii. Post –MSJ Discovery**

23 Plaintiff will need six months to conclude its pre-MCC discovery. If the Court issues its
24 ruling on Defendants' MSJ at the hearing Plaintiff proposes, he would conclude his pre-MCC
25 discovery by March 15, 2013. If her honor believes the Court will not issue its MSJ order for
26 thirty to forty-five days from the MSJ Hearing, Plaintiff proposes the following MCC briefing
27 schedule:
28

1	March 14, 2013	MCC Expert Designation and Production of Reports Served
2	April 8, 2013	MCC Rebuttal Expert Designation and Production of Reports Served
3	May 7, 2013	All pre-MCC discovery concluded
4	June 10, 2013	Plaintiff files and serves his MCC
5	July 10, 2013	Defendant files and serves it opposition to Plaintiff's MCC
6	August 12, 2013	Plaintiff files and serves his reply in support of MCC
7	August 26, 2013	MCC Hearing

9
10 Plaintiff proposes increasing the number of depositions on each side from 10 to 20, and
11 increasing the number of interrogatories he may serve on each Defendant to 50 interrogatories per
12 defendant. Plaintiff also proposes increasing the number of requests for admission to 50 requests
13 for admissions on each party.

14 The subjects on which discovery will be needed include, *inter alia*, the relationships
15 among the various BBG entities, including BBG Communications, Inc., BBG Global AG, BBG
16 Holdings Limited, BBG Financial Services SARL, G-Tel Communications, Inc. and B.Tel, S.A.
17 de C.V., as well as the uniform scheme to not disclose fee and rate information for calls placed at
18 BBG payphones prior to callers incurring charges for their calls.

19 With regard to Defendants' discovery proposal, trifurcation is inappropriate in putative
20 class actions. Plaintiffs propose bifurcation as a measured and appropriate means of avoiding
21 discovery not needed to oppose Defendants' MSJ, but which assures Plaintiff has the right to
22 conduct all discovery allowed under the FRCP.

23 Furthermore, as to Plaintiff's right to conduct post MSJ discovery, without Court ordered
24 restrictions, the Ninth Circuit, local District Courts, and the MCL 4th, have recognized that
25 "information about the nature of the claims on the merits and the proof that they require may be
26 important to deciding class certification." *See, e.g., Ho v. Ernst & Young LLP*, 2007 WL 1394007
27 (N.D. Cal. 2007); W. Moore, *Moore's Federal Practice* 3rd, §23.61[6][b] (3d Ed. 1999); H.
28 Newberg & A. Conte, *Newberg on Class Actions* §9.44 (2002), and cases cited therein. As stated

1 in the MCL 4th, “arbitrary insistence on the class/merits discovery distinction sometimes thwarts
 2 an informed judicial assessment that current class certification practice emphasizes” and delays
 3 resolution of the case as it will inevitably devolve into a discussion about what is “class” and what
 4 is “merits” discovery, as “there is not always a bright line between the two” and unless Defendants
 5 will stipulate that the merits as asserted in the FAC are accurate for purposes of class certification,
 6 this issue will significantly slow down discovery and the prosecution of this case.
 7 “[S]ometimes...certification is proper only if ‘the trial court is satisfied, after a rigorous analysis,
 8 that the prerequisites of Rule 23 (a) have been satisfied,’...Frequently that ‘rigorous analysis’ will
 9 entail some overlap with the merits of the plaintiff’s underlying claim. That cannot be helped. ‘ ”
 10 ‘[T]he class determination generally involves considerations that are enmeshed in the factual and
 11 legal issues comprising plaintiff’s cause of action.” *Dukes v. WalMart*, 131 S. Ct. 2541, 2551-
 12 2552 (2011) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160, 102 S.
 13 Ct. 2364 (1982) and *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469, 98 S. Ct. 2454 (1978).

14 Based on the foregoing, Plaintiff’s right to conduct discovery should not be restricted or
 15 bifurcated.

16 **b. Defendants’ Proposed Discovery Plan**

17 Plaintiff is correct that the parties differ as to how discovery in this matter should be
 18 conducted. Defendants propose conducting discovery in three distinct phases to avoid an
 19 unnecessary waste of the parties’ and this Court’s resources and time. More specifically,
 20 Defendants propose that the parties first conduct discovery related to their anticipated motion for
 21 summary judgment. If Plaintiff’s claims survive that motion, then Defendants propose that the
 22 parties conduct discovery related to class certification, and only if a class is certified, conduct
 23 discovery related to any remaining issues.

24 Such serial discovery will not, as Plaintiff contends, “truncate” discovery. If Plaintiff
 25 defeats Defendants’ intended motion for summary judgment and is able to certify a class, he will
 26 still able to take all of the discovery to which he would be entitled were discovery not conducted
 27 in phases. The only difference between Defendants’ proposed phased discovery and what Plaintiff
 28 proposes is that Defendants’ plan ensures that that the deluge of discovery that Plaintiff intends to

1 take is done in such a way that unnecessary discovery (and discovery disputes) can be avoided,
2 preserving the parties' time and resources.

3 Plaintiff also claims that class discovery issues are often enmeshed with merits issues, and
4 the discovery should be conducted without bifurcation. However, Plaintiff's argument ignores the
5 fact this case differs substantially from the factual scenarios presented in the cases and secondary
6 authorities that he cites. Those cases involve classes with similar claims. Here, by contrast, claim
7 similarity is very much an issue, as Plaintiff seeks to represent a *worldwide class of people* who
8 made telephone calls from *myriad different countries*, with *different disclosures* on their
9 payphones and *different laws governing* those disclosures. Before putting the parties through the
10 expense of discovery (especially of the apparently limitless nature that Plaintiff intends), the Court
11 should determine whether Plaintiff's claims are similar enough to proceed on a class basis. Such
12 an approach is both favored by the courts, and warranted in this action. *See, e.g., Oppenheimer*
13 *Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978); *Krim v. Banc Texas Group, Inc.*, 99 F.3d 775,
14 777-78 (5th Cir. 1996); *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181, 1194
15 (11th Cir. 2003).

16 **i. Initial Discovery**

17 As recently stated by the District Court in connection with motions to dismiss filed by both
18 BBG Global and BBG Communications, the issue of whether BBG Global and BBG
19 Communications have an alter ego relationship is a threshold issue: "[T]hat is the whole factual
20 argument. If you don't prove the alter ego and you don't prove the connection to California, you're
21 out the door. You pled it sufficiently. Whether you could prove it is a whole other story."
22 [Transcript of Sept. 23, 2011 hearing at 35:9-13.] In other words, from the District Court's
23 perspective, whether Plaintiff, a Canadian national, can assert a claim under California law arising
24 out of a phone call that he made from Hong Kong to Canada depends on whether he can prove an
25 alter ego relationship between Comm and Global. If he cannot, then there is no basis for applying
26 California law.

27 Based on the District Court's own reasoning, Defendants believe that discovery as to the
28 alter ego and jurisdictional issues should be completed before any other discovery ("**Initial**

1 **Discovery**"). This will enable Defendants to file a motion for summary judgment, which, if
2 successful, would result in an early resolution of this matter, resulting in a more efficient use of
3 scarce judicial resources. To enable the parties to focus on the issues that will be raised by
4 Defendants' intended motion for summary judgment, Defendants believe that all other discovery—
5 including initial disclosures beyond the scope of the issues raised in Defendants' intended motion
6 for summary judgment—should be stayed until that limited motion for summary judgment is
7 decided.

8 That said, it is important to note that Defendants in no way acquiesce to the scope of
9 discovery that Plaintiff has served on Defendants in this action, which is grossly overbroad.
10 Indeed, in over 25 years of class-action practice, counsel for Defendants, Mr. Puglisi, has not seen
11 discovery more abusive than that discovery most recently served on Defendants in this action.
12 The discovery sought to date is so grossly overbroad that it can only be intended to harass
13 Defendants. The requests are even more egregious in light of Plaintiffs failure to present any
14 evidence to the Court to support their conclusory allegations. In short, Plaintiffs discovery
15 requests to date are a transparent attempt by Plaintiffs to use the discovery process to beat
16 Defendants into submission by burdening them with overwhelming costs.

17 For example, Plaintiff alleges that there is an alter ego relationship between Global and
18 Comm, and has sued both of those entities. Plaintiff, however, has sought discovery much broader
19 than this issue, in a transparent attempt to harass Comm, Global, their agents, and the Galicot
20 family. Although Plaintiff has not sued any other entity or individual, nor has he made any
21 allegations suggesting that Global or Comm is the alter ego of any other person or entity, he has
22 sought, among other things, private personal financial information and phone records about the
23 Galicot family and documents regarding Gregorio and Rafael Galicot's and Pilar Urbino's
24 international travel. This case is not about the Galicots as individuals or about their family trusts,
25 and Plaintiff has no basis for seeking such private information before exploring the relationship
26 between Global and Comm, which, as Plaintiff already knows from the declarations of
27 Defendants' auditors, are adequately capitalized and operate at arm's length. Plaintiff similarly
28 asks for documents related to service at the Leipzig Airport, which is completely irrelevant to this

1 case, which is about phone calls made by a Canadian citizen from a payphone at the Hong Kong
 2 Airport to Canada. Leipzig, Germany has nothing to do with this lawsuit. Moreover, this
 3 discovery is particularly objectionable because it is a transparent attempt to obtain discovery
 4 regarding another case pending in the District Court for the Western District of Texas where the
 5 parties have not yet conducted the early meeting of counsel and discovery has not yet begun.
 6 Finally, Plaintiff requests documents regarding Internal Revenue Service investigations or audits
 7 of Comm and the Galicots. Again, this case is about disclosures made a payphone in Germany.
 8 The Comm's and the Galicot's tax documents have no bearing whatsoever on this issue. Plaintiff's
 9 proposed discovery is completely overbroad, irrelevant, and best described as a discovery blizzard
 10 that can serve no purpose but to harass Defendants. Defendants intend to vigorously object to such
 11 discovery.

12 Plaintiff also suggests that he is entitled to explore not only the disclosure of rates at the
 13 Hong Kong airport, but also (1) Defendants' relationships with *all* of their agents and other entities
 14 who perform services on their behalf worldwide and (2) the volume of complaints and
 15 chargebacks registered against Defendants on a worldwide basis, even though Plaintiff's claims
 16 relate only to phone calls that he made from Hong Kong to Canada. Such broad discovery has no
 17 bearing on the issues to be raised in Defendants' motion for summary judgment, and should be put
 18 off until the Court determines whether Plaintiff's action can proceed beyond summary judgment
 19 and whether a class can be certified. There is little point spending countless hours on such
 20 discovery (if it is even relevant) if Plaintiff's claims will not survive Defendants' motion for
 21 summary judgment or class certification.

22 **ii. Class Discovery And Merits Discovery.**

23 If Plaintiff gets past this initial phase, Defendants contend that discovery should be further
 24 phased between discovery related to (1) Plaintiff's intended motion for class certification ("**Class**
 25 **Discovery**") and (2) the merits ("**Merits Discovery**"). Plaintiff has not at this time described any
 26 additional discovery that he intends to seek in these two later phases.

1 **iii. Initial Disclosures And Depositions.**

2 As noted above, Defendants believe that initial disclosures should be phased as well, and
3 propose that the parties exchange more limited initial disclosures related only to the issues to be
4 raised by Defendants' motion for summary judgment by January 23, 2012.

5 As to depositions, Defendants understand that phased discovery may necessitate deposing
6 certain individuals more than once. Defendants agree with Plaintiff that some witnesses could be
7 deposed once during each phase of discovery, but that the total deposition time for any witness
8 over the course of this lawsuit cannot exceed the seven hours provided for in the Federal Rules Of
9 Civil Procedure.

10 **iv. Defendants' Proposed Schedule.**

11 Defendants note that Plaintiff now complains that he cannot complete his discovery within
12 the time frame that he requested and the Court suggested in its order following the Early Neutral
13 Evaluation Conference, and instead request additional time (which, incidentally, is nearly identical
14 to Defendants' original proposal to the Court). Defendants are willing to consider a longer
15 schedule, but they propose the following dates in accordance with the Court's ENE Order.
16 Moreover, Defendants note that their counsel stated that they could file their motion for summary
17 judgment fairly quickly, but *never* proposed a date certain or suggested that they could file it in
18 January or February. On the contrary, Defendants suggested, in writing, the March 9, 2012 date
19 proposed below. Thus, Plaintiff's counsel's "understanding" that Defendants' counsel agreed to
20 file Defendants' motion by "the end of January or middle of February" is incorrect.

Date	Event
February 24, 2012	Last day to conduct Initial Discovery, file related discovery motions.
March 9, 2012	Last day to file motions for summary judgment related to the Initial Discovery.
April 27, 2012	Hearing on motions for summary judgment related to the Initial Discovery.
May 25, 2012	Last day to serve initial disclosures

Date	Event
August 3, 2012	Last day to conduct Class Discovery and file related discovery motions (assuming no experts).
August 17, 2012	Last day to file motion for class certification
September 28, 2012	Last day to oppose motion for class certification
October 12, 2012	Last day to file reply brief in support of motion for class certification
October 26, 2012	Hearing on motion for class certification
March 29, 2013	Last day to conduct Merits Discovery
July 3, 2013	Last day to file dispositive motions

Finally, Defendants do not believe that increasing the number of depositions or written discovery allowed in this action is necessary at this time. Plaintiff has suggested that he intends to depose *17* people and/or entities in connection with the Initial Discovery alone, specifically with regard to his alter ego allegations. Plaintiff does not need to take 17 depositions to determine that there is no alter ego relationship between Global and Comm, nor does he need 25 depositions in this case more broadly. Defendants believe that Plaintiff should be limited to the 10 depositions to which he is entitled under the Federal Rules of Civil Procedure at this time. If, after taking those depositions, Plaintiff believes that he needs to depose more people and or entities, Plaintiff should seek relief from the Court.

2. PROPOSED TIMING OF RULE 26(A)(2) EXPERT WITNESS DISCLOSURES

The parties agree that the Rule 26(a)(2) expert witness disclosures will be made pursuant to Rule 26(a)(2)(C), for trial experts and propose their respective schedules for doing so per the schedules set forth below. Plaintiff proposes that MCC experts be designated and their reports produced as stated in the schedule proposed above.

Defendants do not believe that Plaintiff will need expert testimony to support his motion for class certification. However, if Plaintiff does use expert testimony, Plaintiff's proposal to give Defendants less than one month to review his expert's report, depose his expert, find their own

expert, and have that person prepare a report is unreasonable. Defendants need, at the very least, two months in which to complete all of these tasks. Thus, in the event that Plaintiff intends to use expert testimony to support his motion for class certification, Defendants propose that Plaintiff disclose his expert and provide a report on July 13, 2012 and Defendants disclose their expert and provide a report on September 28, 2012, when they oppose Plaintiff's motion. Defendants further propose that class discovery be extend only with regard to their expert so that Plaintiff may depose him or her if Plaintiff so chooses for use in connection with Plaintiff's reply brief.

3. DISPOSITIVE MOTIONS

a. Plaintiff's Position

Plaintiff understands that BBG Communications, Inc. or BBG Global AG, but possibly both, will be filing motions for summary judgment and that discovery directed at the jurisdiction and alter-ego issues that will be part of the Summary Judgment motions. As stated above Plaintiff's position is that it is only sensible to have orderly discovery, including some merits discovery, proceed first - before one or both of the Defendants file their summary judgment motions. After summary judgment is decided, the parties will conclude any merits and class discovery they deem necessary to prepare to move for and oppose class certification.

b. Defendants' Dispositive Motions

As noted above, Defendants intend to file an initial dispositive motion aimed at the alter ego and jurisdictional issues. Moreover, both sides should be given the opportunity to file for summary judgment after class certification, if any. Based thereon, Defendants propose the following dates, which are also set forth above:

Date	Event
March 9, 2012	Last day to file motions for summary judgment related to the Initial Discovery.
March 30, 2012	Last day to file opposition to motion for summary judgment
April 13, 2012	Last day to file reply brief in support of motion for summary judgment
April 27, 2012	Hearing on motions for summary judgment

Date	Event
	related to the Initial Discovery.
July 3, 2013	Last day to file dispositive motions
July 26, 2013	Last day to file oppositions to dispositive motions
August 9, 2013	Last day to file replies in support of dispositive motions
August 23, 2013	Hearing on dispositive motions

c. Defendants' Proposed Class Certification Briefing Schedule

Defendants propose the following briefing schedule for Plaintiff's motion for class certification (following the close of Class Discovery and assuming no experts):

Date	Event
August 17, 2012	Last day to file motion for class certification
September 28, 2012	Last day to oppose motion for class certification
October 12, 2012	Last day to file reply in support of motion for class certification
October 26, 2012	Hearing on motion for class certification

1
2 **4. ANTICIPATED PRE-TRIAL CONFERENCE DATES**

3 **a. Plaintiff's Proposed Dates**

4 The Court's ruling on the pending motions referenced above Plaintiffs' anticipated motion
5 for class certification may have some impact on whether the parties would seek severance of
6 certain claims or issues, bifurcation of certain claims or issues, or some other ordering of proof at
7 the time of trial. Counsel will continue to discuss these and other relevant scheduling issues as the
8 case progresses.

9 Plaintiff believes that the following pre-trial schedule is reasonable, and realistic, resulting
10 in a trial date about 7 months after the Court issues its order regarding Plaintiff's Motion for Class
11 Certification.

12 Trial Expert Disclosures pursuant to Rule 26(a)(2)	November 27, 2013
13 Contradictory / Rebuttal Expert Information Disclosures	December 26, 2013
14 Dispositive Motion Hearing Cut-off	February 14, 2014
15 Fact and Expert Discovery Cut-off	April 4, 2014
16 Last Day for Final Pre-Trial Meeting of Counsel	April 18, 2014
17 Last Day to Lodge Final Pre-Trial Conference Order, file Final Memoranda and Joint Exhibit List, etc.	April 25, 2014
18 Final Pre-Trial Conference	May 16, 2014

19
20 Plaintiff requests a jury trial on all damage claims and a court trial on all equitable issues.
21 Plaintiff estimates the trial may take approximately 15 court days, depending upon the class
22 certification ruling.

23 **b. Defendants' Proposed Dates**

24 Defendants believe that the following pre-trial schedule, which incorporates all dates
25 referenced in this Report, is reasonable, and realistic:
26
27
28

1	Date	Event
2	February 27, 2012	Last day to conduct Initial Discovery, file related discovery motions.
3		
4	March 9, 2012	Last day to file motions for summary judgment related to the Initial Discovery.
5	March 30, 2012	Last day to file opposition to motion for summary judgment
6		
7	April 13, 2012	Last day to file reply brief in support of motion for summary judgment
8	April 27, 2012	Hearing on motions for summary judgment related to the Initial Discovery.
9		
10	May 25, 2012	Last day to serve initial disclosures
11	August 3, 2012	Last day to conduct Class Discovery and file related discovery motions.
12	August 17, 2012	Last day to file motion for class certification
13	September 28, 2012	Last day to oppose motion for class certification
14	October 12, 2012	Last day to file reply brief in support of motion for class certification
15		
16	October 26, 2012	Hearing on motion for class certification
17	March 29, 2013	Last day to conduct Merits Discovery and file discovery motions
18	April 12, 2013	First Identification of Expert Witnesses
19	April 26, 2013	Supplemental Identification of Expert Witness
20	May 10, 2014	Expert Disclosures pursuant to Rule 26(a)(2)
21	May 24, 2013	Contradictory / Rebuttal Expert Information Disclosures
22		
23	June 21, 2013	Last day to conduct expert discovery and file expert discovery motions
24		
25	July 3, 2013	Last day to file dispositive motions
26	July 26, 2013	Last day to file oppositions to dispositive motions
27	August 9, 2013	Last day to file replies in support of dispositive motions
28		

Date	Event
August 23, 2013	Hearing on dispositive motions
September 16, 2013	Last day to file motions <i>in limine</i>
September 23, 2013	Last Day for Final Pre-Trial Meeting of Counsel
October 7, 2013	Last Day to Lodge Final Pre-Trial Conference Order, file Final Memoranda and Joint Exhibit List, etc.
October 14, 2013	Final Pre-Trial Conference; hearings on motions in limine

5. Document Confidentiality, Preservation And ESI Issues

Prior to the CMC, the parties will exchange information about preserving discoverable information and proposed protocols for producing electronically stored information pursuant to Fed. R. Civ. P. 26(f)(2) and (3).

Dated: January 6, 2012

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Dated: January 6, 2012

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